

December 23, 2013

Chris Downey, AIA  
Architecture for the Blind  
120 Arbor Drive  
Piedmont, CA 94610-1012

Re: Your Request for Advice  
**Our File No. A-13-152**

Dear Mr. Downey:

This letter responds to your request for advice regarding the honorarium provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that this letter does not address incompatible activities rules or other provisions of state law, outside of the Act, that may restrict your ability to earn income while employed by the state.

### QUESTION

Are you prohibited under the Act from receiving honoraria for speaking as a professional architect and periodic lecturer with the UC Berkeley, Department of Architecture, at trade-related conventions, events, and educational settings?

### CONCLUSION

As a licensed architect, a speaking engagement at a trade convention regarding architectural services is a service “customarily provided” by the profession, and payments for this activity would not constitute prohibited honoraria under the Act. However, in regard to other events and educational settings, the determination of whether a speaking engagement is a service “customarily provided” by an architect cannot be made without a more thorough description of the speaking engagement.<sup>2</sup>

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Even if payments are not prohibited honoraria, the payments may still constitute income subject to disclosure under the Act. If you receive income from any particular source of \$500 or more in the twelve months prior to a governmental decision, you may also be disqualified from making, participating in making, or using your position to influence the decision if the decision will have a reasonable foreseeable material financial effect on the source. (See Section 87200 *et seq.*)

## FACTS

You are a recent appointee to the California Commission on Disability Access and a licensed architect. You also hold periodic employment as a lecturer for the UC Berkeley, Department of Architecture. As an architect who is blind, your core business and employment includes both traditional and accessibility related professional architectural services. A significant aspect of your work includes public speaking for trade related conventions, events and educational settings as well as limited educational opportunities and research.

## ANALYSIS

The Act prohibits any member of a state board or commission from accepting an honorarium from any source if the member would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (Section 89502(c).) An “honorarium” is defined as “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.” (Section 89501(a).)

For purposes of the honorarium ban, Regulation 18931.1 defines a “speech given” as “a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate.”

While a payment for speaking at trade-related conventions, events, and educational settings is a payment for a “speech given,” as a professional architect and periodical lecturer, the payments may fall under the exception for earned income. Pursuant to Section 89501(b), “honorarium” does not include:

“Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches.” (Section 89501(b).)

Similarly, Regulation 18932(a) restates Section 89501(b) and provides:

“Honorarium” does not include income earned for personal services if:

“(1) The services are provided in connection with an individual’s business or the individual’s practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to [Regulations 18932.1 through 18932.3]; and

“(2) The services are customarily provided in connection with the business, trade, or profession.”

Regulations 18932.1 and 18932.2 provide several presumptions for determining when a business, trade, or profession is “bona fide.” A trade or professional practitioner is presumed to be “bona fide” if “the tradesperson or professional practitioner possesses current licensure or certification which is issued by state or federal occupational licensing authority, the issuance of which requires a demonstration of skill and knowledge in connection with the relevant trade or profession.” (Regulation 18932.1(c)(1).)<sup>3</sup>

In your case, you are engaged in a bona fide profession as a licensed architect. The more complicated question is whether the services for which you will be paid are “customarily provided” in connection with the profession. As a licensed architect, the determination of whether speaking at trade-related conventions, events, and educational settings is “customarily provided” in connection with your profession, must be made on a case-by-case basis. (*Donald* Advice Letter, No. A-00-276; *Uelman* Advice Letter, No. A-99-281; and *Greenwald* Advice Letter, No. A-95-290A.) For comparison, we have previously provided the following advice regarding this determination:

- Proceeds received by a public official, who was also a medical professional and had written over 300 articles and three textbooks, for publishing books/articles was “earned income” and not considered honoraria if the books/articles were published as part of the official’s medical/professional activities. (*Donald* Advice Letter, *supra*.)
- The earned income exception applies to lectures given by a physician to healthcare professionals related to areas of medicine in which he practices and does research. (*Phillips* Advice Letter, No. A-91-137.) In contrast, a speech regarding healthcare to a group of companies that manufacture pharmaceuticals, diagnostic equipment, and various medical supplies does not appear to be the type of service that is customarily provided in connection with the practice of medicine. (*Filante* Advice Letter, A-92-141.)
- Payments received for conducting church activities and speaking as a licensed minister at youth camps, couples retreats, weddings and funerals are not prohibited honoraria. (*Boatwright* Advice Letter, No. A-93-323.) However, the exception is limited to speaking engagements within the scope of the minister’s duties and does not apply to speeches unconnected to that activity. (*Metcalf* Advice Letter, No. A-95-316.)

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<sup>3</sup> We note that teaching is also presumed to be a “bona fide” profession in certain circumstances. To the extent that you are teaching (1) under contract or as an employee of an educational institution accredited, approved, or authorized by a state or federal agency or a bona fide independent accrediting organization; (2) a course that provides credit toward continuing education requirements of the pertinent profession; or (3) students enrolled in an examination preparation program, payments for your services would not constitute prohibited honorarium. (Regulation 18932.2.) However, as you have not indicated whether any of these circumstances apply to the speaking engagements in question, we focus our analysis primarily on services you provide as a licensed architect.

Conducting a class or lecture as a licensed architect regarding traditional and/or accessibility related architectural services at a convention for individuals within the trade is very much comparable to those factual circumstances in which we have determined that an official's activities are "customarily provided" such as books/articles by a medical professional, a physician's lecture to other healthcare professional, or a minister's church-related activities. Accordingly, based upon the facts you have provided, we find that a speaking engagement at a trade convention regarding traditional and/or accessibility related architectural services is a service "customarily provided" by an architect, and payments for this activity would not constitute prohibited honoraria under the Act.

However, in regard to other events and educational settings, the determination of whether a speaking engagement is a service "customarily provided" by an architect cannot be made without a more thorough description of the speaking engagement. You may wish to seek additional advice regarding any particular speaking engagement should you need assistance in the future.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

BGL:jgl